WONG YET ENG v. CHIN CHENG FOO

[F.C. (Wan Suleiman, Mohamed Azmi and Hashim Yeop A. Sani F.JJ.) September 13 & June 16, 1984.]

[Johore Bahru – Federal Court Civil Appeal No. 202 of 1982]

Administrative Law – Decision of Rent Appeal Board – Provision that appeal be heard within six weeks – Whether directory or mandatory – Allegation of denial of natural justice – No statement of grounds of decision of Rent Tribunal – Control of Rent (Johore) (Rent Tribunal) Rules, 1967 – Control of Rent Act 1966, s. 18.

The appellant applied to the Rent Tribunal for possession of the ground floor of premises at Batu Pahat, Johore, which was occupied by the respondent, for the purpose of development. The respondent did not appear and the Rent Tribunal gave its decision in favour of the appellant. An appeal to the Rent Appeal Board was dismissed. Respondent then applied to the High Court for an order of *certiorari* to quash the decision of the Appeal Board. The High Court allowed the application and quashed the decision. The appellant appealed.

Held: (1) the requirement that the appeal must be heard by the Appeal Board within six months is directory rather than mandatory and non-compliance did not nullify the decision of the Rent Appeal Board;

(2) although no reasons were given by the Rent Tribunal for its decision there was no denial of natural justice in this case because when a Rent Tribunal makes an order allowing the application it can be on one ground and one ground only;

(3) *Certiorari* should not have been granted in this case as it had not been shown that the error if any, went to jurisdiction or that the Appeal Board had done or failed to do anything in the course of the enquiry as to render its decision a nullity.

Cases referred to:–

(1) *South East Asia Firebricks Sdn. Bhd.* v. *Non-Metallic Products Manufacturing Employees Union & Ors.* [1980] 2 M.L.J. 165.
(2) *Tai Teik Onn & Anor.* v. *Ong Ewe Te* [1982] 1 M.L.J. 33.
(3) *Capt. Kamarul Azman* v. *Wan Abdul Majid & Ors.* [1983] 2 M.L.J. 4.
(4) *Mersing Omnibus Co Sdn Bhd.* v. *Minister of Labour & Manpower & Anor.* [1983] 2 M.L.J. 54.

FEDERAL COURT.

C. Das for the appellant.
Lee Buck Heng for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the Judgement of the Court): The appellant is the landlord of No. 18, Jalan Engan, Batu Pahat, Johore, controlled premises under the Control of Rent Act, 1966. On May 29, 1979 appellant applied to the Rent Tribunal, District of Batu Pahat for possession of the ground floor, which was occupied by the respondent, for the purpose of development under section 18 of the Act.

At the hearing before the Tribunal, the respondent was absent, nor did counsel appear on her behalf. On January 20, 1981 the Tribunal gave its decision in favour of appellant.

The respondent appealed and on October 7, 1981 the appeal was dismissed by the Rent Appeal Board.

The respondent then applied to the High Court at Muar for an order of *certiorari* to quash the decision of the Appeal Board. The motion was duly heard on July 18, 1982 and the decision of the Rent Appeal Board was quashed. We are unfortunate in not having the benefit of any grounds of judgment.

Six grounds on which the relief was claimed were set out in the Statement filed pursuant to Order 51 Rule 1(2) of the Rules of the High Court 1980 and are set out hereunder:

(1) The Rent Tribunal in arriving at its decision made on 20th January 1981 failed to comply with the provisions of Rule 8(j) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to state the reason or reasons for making the decision thereby rendering the Appeal Board's decision made on 7th October 1981 null, void and of no effect;

(2) The Rent Tribunal failed to comply with the provisions of Rule 8(j) (ii) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to notify its decision to the parties concerned within the period stipulated in the said rule thereby rendering the Appeal Board's said decision null, void and of no effect;

(3) The Rent Tribunal failed to comply with the provisions of Rule 9(4) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to state the grounds on which the Tribunal arrived at its decision thereby rendering the Appeal Board's said decision null, void and of no effect;

(4) The Respondent Wong Yet Eng obtained the Order of the Rent Tribunal dated 20th January 1981 by misleading the Tribunal into believing that one Kee Kong (holder of NRIC No. 0041706) a material witness who gave evidence at the hearing of the Respondent's application on 8th December 1980 was at the material time connected with Syarikat Kim Trading Co. of No. 30A Jalan Keruing, Taman Batu Pahat, Batu Pahat, Johore thereby rendering the Appeal Board's said decision null, void and of no effect;

(5) The Appeal Board failed to comply with the provisions of Rule 10(3) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to hear and determine the appeal within the period stipulated in the said rule, thereby rendering the Board's said decision null, void and of no effect;

(6) There was a denial to the Applicant of natural justice at the hearing before the Appeal Board in that the Applicant's Counsel could not have presented the Applicant's case fully and adequately without a Statement of the grounds of the decision made by the Rent Tribunal."

Out of these as Encik Das for appellant correctly indicated, grounds 1 to 4 were directed against the Rent Tribunal. He therefore argued that the learned Judicial Commissioner must have granted his order on the basis of grounds (5) and (6) only, these grounds being the only ones directed against the Appeal Board.

Section 15 of the Act says that "... any decision made by the Appeal Board shall be final and shall not be questioned in any Court." No doubt with *The South East Asia Firebricks's*[1] case in mind, both sides concede that *certiorari* will lie if the error goes to jurisdiction or if the Appeal Board had done or failed to do something in the course of the enquiry as to render its decision a nullity.

The fact that the Appeal Board did not hear within 6 weeks does not go to jurisdiction, but is merely a breach of procedural rules, says Encik Das. He relies on *Ta Teik Onn & Anor.* v. *Ong Ewe Te*[2] where an identical point was raised. The Appeal Board in that case, where there was an identical rule, in the State of Perak for the Board to hear and determine the appeal within six weeks from the receipt of the memorandum of appeal, had done so more than 2 years later. B.T.H. Lee J. was of the view that such non-compliance did not go to the foundation of the jurisdiction of the Appeal Board.

Continuing to treat this as a breach of the rules of procedure, we were referred to the Privy Council decision in *Capt. Kamarul Azman* v. *Wan Abdul Majid & Ors.*[3] where the sole question in the appeal was whether the fact that the oath was not administered by the person prescribed in the Rules of Procedure rendered the Court-martial improperly conducted, with the consequence that it had no jurisdiction to try the appellant. It was held that failure to observe these mandatory provisions, though a serious matter, was an error of procedure which did not go to the jurisdiction of the court, so that the appeal was dismissed.

We must confess to being quite unable to follow some of Encik Lee's counter to this ground for whilst maintaining that this failure to comply with what he too regards as a requirement of procedure made the decision of the Appeal Board a nullity, he also cited in support the decision of this Court in *Mersing Omnibus Co. Sdn. Bhd.* v. *Minister of Labour & Manpower & Anor.*[4] There the appellant was out of time and neither sought an extension of time nor accounted for the delay to the satisfaction of the learned Judge. It was held that leave should not be granted to appellants to apply for *certiorari* and the learned Judge had no jurisdiction to do so. We can only conclude that Mr. Lee finds support in this authority for the proposition that failure to comply with the procedural requirement as to time by the Tribunal nullifies the decision of the Appeal Board.

He cites two passages from *Halsbury's* Laws of England 4th Edition Vol. 1. At page 26 para 24 there appears the following passage:

"Waiver and estoppel. It is a general principle of law that an excess of statutory power cannot be validated by acquiescence in or failure to object to the excess, or by the operation of an estoppel. Hence it is possible for a public authority to plead the invalidity of its own conduct."

At page 10 para 27 under the heading 'Validity' there appears this passage:

"Validity. If an act or decision, or an order or other instrument, is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Such an act can therefore be successfully impeached in collateral proceedings, and no legally recognised rights founded on the assumption of its validity should accrue to any person even before the act is declared to be invalid or set aside in a court of law."

Encik Lee says that Rule 10(3) is mandatory, and even if one were to assume that it was directory there must be substantial compliance with the statutory provision. Where the period prescribed is six weeks within which to hear the appeal and come to a decision, doing so some two years later is no substantial compliance, he submits. He cited a number of authorities wherein non-compliance with mandatory statutory requirements rendered decisions so made null and void.

In the 12th Edition of *Maxwell* on Interpre-

tation of Statutes, at pages 314/315 is a most enlightening passage which reads:

"It is impossible to lay down any general rule for determining whether a provision is imperative or directory. "No universal rule", said Lord Campbell L.C. "can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed." And Lord Penzance said, "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory".

It is plain that the object of Rule 10(3) in fixing a time limit for hearing and determining the appeal is to ensure that appeals are speedily dealt with. But the composition of the Appeal Board as prescribed by section 15(3) of the Act makes the unusual practice of fixing of a time limit for completion difficult to implement. We can safely assume that the rule making authority was aware of that. Taking everything into consideration we are inclined to take the view that this requirement is directory rather than mandatory and that non-compliance does not nullify the Board's decision.

In Ground 6, respondent's complaint is that there was denial of natural justice at the hearing before the Appeal Board because without a statement of the grounds on which the Rent Tribunal came to its decision, counsel for respondent was unable to present his case fully and adequately.

We are however inclined to agree with Encik Das that an application for recovery of possession under section 18 for the purpose of development is unequivocal. When a Rent Tribunal makes an order allowing the application it can be on one ground, and one ground only. It would be inappropriate to make comparison between the various grounds on which a Court could make orders for recovery of possession on an application under section 16 with an application to the Rent Tribunal under section 18, but where the latter hears and determines the application under section 13 (1) (a), to determine fair rent, or under section 13 (1) (b) and section 20 to apportion and determine fair rent, or under section 13 (1) (c) for increase of rent, the real importance of giving a reason or reasons for its decision becomes obvious, and only in such instances could respondent have good reason to complain.

We would therefore allow this appeal with costs.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Abdullah A. Rahman & Co.*

LIM KHEAK TEONG v. PUBLIC PROSECUTOR

[F.C. (Salleh Abas L.P., Mohamed Azmi and Hashim Yeop A. Sani F.JJ.) June 22, 1984]

[Kuala Lumpur – Federal Court Criminal Application No. 12 of 1983]

Criminal Law and Procedure – Appeal – Question of fact – Acquittal by subordinate court – Evidence to support defence and no misdirection by subordinate court – Whether appellate court can substitute its own finding for that of subordinate court – Burden on defence.

The applicant had been charged in the Sessions Court, Kuala Lumpur on two counts under section 4(c) of the Prevention of Corruption Act, 1961. In essence the charges were that he did knowingly use with intent to deceive the Malaysian Government two documents claiming subsistence allowances for two days in December 1975 and January 1976, the total amount for each claim being $36/-. At the close of the prosecution case the learned President of the Sessions Court called on the defence and the applicant gave evidence. In his evidence the applicant did not dispute that the dates mentioned in the charges were incorrect but stated that it was an honest mistake firstly because when he prepared the claims he merely relied on the dates on the new hotel receipts since he had lost the old receipts and secondly he was very busy with his work at that time. After hearing the defence the learned President of the Sessions Court acquitted the applicant of both charges. In his judgement he stated that after considering the evidence and after observing the demeanour of the applicant, he found that the applicant had succeeded in giving an explanation which was consistent with his innocence. He accepted the explanation of the applicant that it was an honest mistake. On appeal to the High Court the learned judge in his appellate capacity found that there could not be any question of a genuine mistake as the applicant had sufficient time to prepare the claims. He also rejected the learned President's assessment of the demeanour of the applicant since no particulars were sent out as basis of the assessment. The appellate judge substituted a conviction for the acquittal in respect of both charges. The applicant was given leave to refer the following question to the Federal Court – "In an appeal against